UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

ROBINSON SOLUTIONS (US), INC.[1]

Employer

and **Case 7-RC-23185**

REGION 1C, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO

Petitioner

LABORERS' LOCAL 499, MICHIGAN LABORERS' DISTRICT COUNCIL AND LABORERS' INTERNATIONAL UNION OF NORTH AMERICA (LIUNA)

Intervenors

APPEARANCES:

Dwight J. Mains, of Holt, Michigan, for the Employer.
Patricia R. Manzo, of Flint, Michigan, and Melvin Coleman, for the Petitioner.
Scott Graham, Attorney, of Kalamazoo, Michigan, Robert Malcolm and Dan Minton of Ann Arbor, Michigan, for the Intervenors.

DECISION AND DIRECTION OF ELECTION

Upon a petition filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

[1] The Employer's name appears as amended at the hearing.

Upon the entire record in this proceeding,[2] the undersigned finds:

1. The hearing officer's rulings are free from prejudicial error and are affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.

3. The labor organizations involved claim to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Overview

On April 9, 2008, Petitioner filed the instant petition seeking to represent about 40 cleaning and maintenance employees. The Employer and Intervenors maintain that the petition is barred by their 2008-2011 collective bargaining agreement. Petitioner asserts that no contract existed at the time it filed the petition. Intervenors also assert that the petition should be dismissed because Petitioner submitted insufficient showing of interest, and pursuant to the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)'s Article XX provision prohibiting an organizational attack by one AFL-CIO affiliate on the established bargaining relationship maintained by another AFL-CIO affiliate. I find that no contract which could serve as a bar to the instant petition existed between the Employer and Intervenors as of April 9, 2008, because the document they rely upon does not set forth its duration and is lacking in substantial terms. With regard to the Intervenors' challenge to the Petitioner's showing of interest, the sufficiency of a petition's showing of interest is an administrative determination, and not appropriate for determination at a pre-election hearing. Similarly, Intervenors' assertion that the Petitioner is in violation of Article XX is immaterial in this proceeding because the record evidence does not establish that the Laborers' International Union of North

[2] Briefs were due on May 5, 2008. Intervenors timely filed their brief, but attached extraneous documents which were not entered into evidence at hearing. Intervenors' brief was carefully considered, however, the extraneous documents were disregarded. On May 5, Petitioner faxed its brief to the Region. Under Section 102.114(g) of the Board's Rules and Regulations, facsimile transmission is not an acceptable method of filing. Petitioner's brief was untimely filed on May 6 under Board's Rules and Regulations, Section 102.111(b). In addition, Petitioner did not offer any evidence of good cause for its late filing based on excusable neglect pursuant to Section 102.111(c)(2) of the Board's Rules and Regulation. Accordingly, Petitioner's brief was not considered. The Employer did not file a brief.

America is affiliated with the national AFL-CIO, and because the Regional Director does not have authority to make a determination that Article XX has been violated.

Collective bargaining history

The Employer is a Michigan corporation engaged in providing contract facilities management and industrial cleaning/janitorial services out of its facility located at 3120 Sovereign Drive, Lansing, Michigan. On June 11, 2001, the Employer recognized Laborers' Local 499's predecessor, Local 998, as the exclusive collective bargaining representative of all cleaning and maintenance workers, trainers and helpers, located at the General Motors Grand River Assembly plant in Lansing, Michigan. At a later date unspecified in the record, the bargaining unit expanded to include the cleaning and maintenance employees at the newly constructed General Motors Delta Township facility. The Employer and Intervenors entered into successive collective bargaining agreements effective from June 11, 2001, through March 31, 2005, and April 1, 2005, through March 31, 2008.

Current contract

On March 26, the Employer and Intervenors met to negotiate a successor contract. The Intervenors presented a page of proposals to the Employer setting forth their proposed changes to, and specifically referencing provisions of, the prior contract. The parties orally agreed to extend the prior contract until April 3 when they would meet again for negotiations. The parties also orally agreed that whatever contract they reached would be retroactive to April 1.

On April 3, the Employer and Intervenors met for negotiations and reached agreement on most issues. Gary Jorgensen, business manager for Michigan Laborers' District Council, and Dwight Main, the Employer's vice president, signed a one-page document which the Employer and Intervenors rely upon in arguing the instant petition is barred by their contract. The document is titled "Robinson Solutions, Union Proposals, 4-3-2008." The document contains a list numbered one through seven: "1. Yes, 2. Yes, 3. No, management agrees to copy Union on all violations, 4. No, 5. Union withdrawal, 6. Employees insurance shall start 1st day of the 6th month including time worked thru [sic] temp agency, 7. Union agrees to meet with management to negotiate a participate [sic] health care co-pay and opt-out provision." The document continues "1st—11.00, 2nd—12.00, 3rd—12.50, Retroactive to first full pay period." The document ends with Jorgensen and Main's undated signatures.

Main and Malcolm, business manager for Laborers' Local 499, explained at hearing that the numbered list in the April 3 document corresponds to the Intervenors' March 26 proposals and contains the agreements reached on each proposed change.[3] Main testified that the designation "1st… 2nd… 3rd" sets forth the yearly wage increases. He also testified that while the document stated that the Intervenors would meet with management to negotiate health care co-pays and opt-out, they in fact reached agreement on that issue that day. According to Malcolm, the parties reached agreement on this issue on April 22 after Malcolm and Minton, secretary/treasurer of Laborers' Local 499, had discussed it with the membership. However, their agreement was consistent with what was discussed on April 3.

Although the April 3 document did not set forth the dates for the terms of the new contract, the parties orally agreed that it would apply retroactively to April 1, and expire on March 31, 2011.

On April 8 and 9, Malcolm and Minton met with the membership to inform them of the terms of the new contract. The Intervenors' bargaining team ratified the contract at the table, as they had done with previous contracts. The full booklet form of the contract was executed by the parties on April 22.

Mains testified that the Employer implemented the terms and conditions of the contract immediately after April 3. The employees received pay increases retroactive to April 1 on April 18.

Analysis

As an initial matter, Intervenors argue that the petition should be dismissed because of lack of sufficient showing of interest and because Petitioner is assertedly in violation of the AFL-CIO's Article XX provision prohibiting an organizational attack by one AFL-CIO affiliate on the established bargaining relationship maintained by another AFL-CIO affiliate. Both challenges are inappropriate issues to be raised at a representation hearing. With regard to Intervenors' challenge to the Petitioner's showing of interest, the sufficiency of a petition's showing of interest is an administrative determination. An integral and essential element of the Board's requirement of a showing of interest is the "nonlitigability of a petitioner's evidence as to such interest." ***S.H. Kress & Co.***, 137 NLRB 1244, 1248-1249 (1962). Further, any request for a check of the showing to determine its quantitative sufficiency must be made in a timely manner, at or around the time the petition is filed. ***Community Affairs, Inc.***, 326 NLRB 311 (1998).

[3] Intervenors' Exhibit 4 consists of two pages: the April 3 document and the Intervenors' March 26 proposals. The April 3 document makes no explicit reference to the March 26 document, which is not signed, initialed, or dated.

Intervenors' assertion that the Petitioner is in violation of the AFL-CIO's Article XX is also improper in this forum. Under Section 11018.1(f) of the Board's Casehandling Manual, Part Two, Representation Proceedings, the Regional Director does not have authority to decide whether Article XX applies to the interested unions or whether the Petitioner is in violation of Article XX. Moreover, the record evidence establishes only that the Intervenors are affiliated with the State of Michigan's AFL-CIO. I take administrative notice that on March 13, 2008, the Laborers' International Union of North America affiliated with the AFL-CIO's Building & Construction Trades Department. This is immaterial to the instant proceeding, however, because the employees in the unit sought are cleaning and maintenance employees, and not engaged in the building and construction trades. Thus, the record evidence does not warrant dismissing this petition, or placing it in abeyance pending any Article XX determination.

The Board's contract-bar doctrine is intended to balance the statutory policies of stabilizing labor relations and facilitating employees' exercise of free choice in the selection or change of a bargaining representative. ***Direct Press Modern Litho***, 328 NLRB 860 (1999). Because a finding that a contract bars a petition necessarily results in the restriction of the employees' right to freely choose a bargaining representative, an agreement must meet certain formal and substantive requirements in order to bar an election. ***Appalachian Shale Products***, 121 NLRB 1160, 1161 (1958); ***Seton Medical Center***, 317 NLRB 87 (1995). It is well-established that for a contract to bar a petition, the contract must (1) be signed by both parties prior to the filing of the petition that it would bar; and (2) contain substantial terms and conditions of employment sufficient to stabilize the parties' bargaining relationship. ***Waste Management of Maryland, Inc.*****,** 338 NLRB 1002 (2003).

The signed writing setting forth the parties' agreement may be a formally executed booklet or a series of informal written exchanges initialed by the parties to signify mutual acceptance of terms. ***Pontiac Ceiling & Partition Co.***, 337 NLRB 120, 123 (2001); ***Yellow Cab Co.***, 131 NLRB 239 (1961). However, "the documents relied on as manifesting the parties' agreement must clearly set out or refer to the terms of the agreement and must leave no doubt that they amount to an offer and an acceptance of those terms through the parties' affixing of their signatures." ***Seton Medical Center***, 317 NLRB 87 (1995)**.** Similarly, the documents must establish the identity and the terms of the agreement. See ***Branch Cheese***, 307 NLRB 239 (1992).

Here, the April 3rd document, while signed, does not set forth the dates of its term. Both an effective date and an expiration date are material terms of a contract. ***South Mountain Healthcare and Rehabilitation Center***, 344 NLRB 375 (2005); ***Cind-R-Lite Co.***, 239 NLRB 1255, 1256 (1979). The Board has found that unless these dates are apparent from the face of the agreement without resorting to extrinsic evidence, it will

not serve as a bar. ***South Mountain Healthcare***, supra. The duration of the agreement must be clear from its face so that employees and outside unions may look to it to determine the appropriate time to file a representation petition. ***Id.*; *Cooper Tire & Rubber Co.***, 181 NLRB 509 (1970).

In addition, the April 3rd document is lacking in substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship. It contains a provision setting forth when a new employee will be eligible for healthcare and arguably appears to contain wage rates. An agreement will not serve as a bar if limited to wages alone, or to one or several provisions not deemed substantial. ***Appalachian Shale***, supra; ***Artcraft Displays***, 262 NLRB 1233 (1982). While more substantial terms and conditions of employment were contained in the predecessor agreement that the parties' testified they intended to incorporate into their new agreement, it is not apparent from the April 3rd document that the parties intended to include provisions from the predecessor contract. Compare with ***Jackson Terrace Associates,*** 346 NLRB 180 (2005) (agreement a bar to petition where it specifically states that it retains the terms of the parties' prior collective bargaining agreement). In fact, the agreed-upon terms memorialized in the April 3rd document can be discerned only when read in conjunction with the Intervenors' unsigned, undated March 26 proposals, or through the use of other extrinsic evidence, such as testimony. In representation cases, the Board has consistently limited its inquiry to the four corners of the document or documents alleged to bar an election and has excluded the consideration of extrinsic evidence. ***Waste Management of Maryland, Inc.*,** 338 NLRB 1002 (2003), and cases cited therein.

Conclusion

Based on the foregoing and the record as a whole, the April 3rd document does not contain substantial terms and conditions of employment sufficient to stabilize the parties' bargaining relationship. Specifically, the document does not set forth the term of the agreement and does not set forth on its face substantial terms and conditions of employment. For these reasons, the April 3rd document cannot bar the instant petition. The agreement executed on April 22 post-dates the filing of the petition and also cannot serve as a bar. Accordingly, I shall direct that an election be held.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time cleaning and maintenance workers, trainees, and helpers in the employ of the Employer located at General Motors' Grand River Assembly Plant and Delta Township facilities in Lansing, Michigan; but excluding clerical employees, confidential employees, and guards and supervisors as defined in the Act.

Those eligible to vote shall vote as set forth in the attached Direction of Election.

Dated at Detroit, Michigan, this 15th day of May 2008.

(SEAL)

/s/ [Raymond Kassab]

Raymond Kassab, Acting Regional Director
National Labor Relations Board, Region 7
Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 300
Detroit, Michigan 48226

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **REGION 1C, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO or LABORERS' LOCAL 499, MICHIGAN LABORERS' DISCTRICT COUNCIL AND LABORERS' INTERNATIONAL UNION OF NORTH AMERICA (LIUNA), or NO UNION.** The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have quit or been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. ***Excelsior Underwear, Inc.*** 156 NLRB 1236 (1966); NLRB ***v. Wyman-Gordon Company***, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. ***North Macon Health Care Facility***, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **May 22, 2008**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency website, **www.nlrb.gov**,[4] by mail, or by facsimile transmission at **313-226-2090**. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **three copies** of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Posting of Election Notices

Section 103.20 of the Board's Rules and Regulations states:

a. Employers shall post copies of the Board's official Notice of Election on conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

b. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sunday, and holidays.

[4] To file the list electronically, go to **www.nlrb.gov** and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Regional, Subregional and Resident Offices** and click on the **File Documents** button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, the user must check the box next to the statement indicating that the user has read and accepts the E-Filing terms and then click the **Accept** button. The user then completes a form with information such as the case name and number, attaches the document containing the request for review, and clicks the **Submit Form** button. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under **E-Gov** on the Board's web site, **www.nlrb.gov**.

c. A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. [This section is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice. ***Club Demonstration Services***, 317 NLRB 349 (1995).]

d. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.69 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001**. This request must be received by the Board in Washington by **May 29, 2008**. The request may be filed electronically through **E-Gov** on the Board's website, **www.nlrb.gov**,[5] but may **not** be filed by facsimile.

[5] Electronically filing a request for review is similar to the process described above for electronically filing the eligibility list, except that on the E-Filing page the user should select the option to file documents with the **Board/Office of the Executive Secretary**.

To file the request for review electronically, go to **www.nlrb.gov** and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the **File Documents** button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, the user must check the box next to the statement indicating that the user has read and accepts the E-Filing terms and then click the **Accept** button. Then complete the E-Filing form, attach the document containing the request for review, and click the **Submit Form** button. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under **E-Gov** on the Board's web site, **www.nlrb.gov**.